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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
13 INTERNATIONAL, a California not-)
for-profit religious corporation;) CHURCH OF SCIENTOLOGY
14 Plaintiffs,) INTERNATIONAL'S MEMORANDUM
15 vs.) OF POINTS AND AUTHORITIES
16) IN SUPPORT OF ITS DEMURRER
GERALD ARMSTRONG; MICHAEL WALTON;) TO GERALD ARMSTRONG'S
17 et al.,) CROSS-COMPLAINT
18 Defendants.) DATE: February 11, 1994
19) TIME: 9:00 a.m.
20) DEPT: 1
GERALD ARMSTRONG,) DISCOVERY CUT-OFF: None
21 Cross-Complainant,) MOTION CUT-OFF: None
22 vs.) TRIAL DATE: None
23)
CHURCH OF SCIENTOLOGY)
24 INTERNATIONAL, a California)
Corporation; DAVID MISCAVIGE;)
DOES 1 to 100;)
25 Cross-Defendants.)
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I. INTRODUCTION

The cross-complaint filed herein by defendant Gerald Armstrong ("the Second Cross-complaint") is a duplicative action against plaintiff Church of Scientology International ("the Church") which should not be countenanced by this Court for two reasons. First, the rambling allegations of the Second Cross-complaint do not, as a matter of law, state a claim for abuse of process. The allegations all delineate conduct which is: (a) barred on its face by the statute of limitations; and/or (b) privileged pursuant to Civil Code § 47(2). The Church's demurrer should be sustained for this reason alone.

Second, the Second Cross-complaint is an exact duplicate of a cross-complaint filed by Armstrong in Case No. BC 052395, Los Angeles Superior Court ("the First Cross-complaint"), with the following exceptions:

* Armstrong has named only two cross-defendants herein, instead of the seven named in the First Cross-complaint,¹ and has eliminated reference to these cross-defendants (no cross-defendant save for the Church has been served in either action);

* Armstrong attributes all actions in the Second Cross-complaint to an undefined "Scientology"; in the First Cross-complaint, he attributes all of those same

¹ The cross-defendants herein are the Church and David Miscavige. Mr. Miscavige has not been served. In the previous action, Armstrong named as cross-defendants the Church, David Miscavige, Church of Scientology of California, Religious Technology Center, Church of Spiritual Technology, Author Services, Inc., Author's Family Trust, Estate of L. Ron Hubbard and Norman Starkey. No attempt was ever made by Armstrong to serve any of these cross-defendants, other than the Church.

1 actions instead to "the ORG";²

2 * The First Cross-complaint includes causes of
3 action for declaratory relief and breach of contract
4 which are not included herein;

5 * Armstrong has added two paragraphs to the
6 Second Cross-complaint, alleging that "Scientology"
7 abused process by filing two lawsuits: Case No. BC
8 084642, currently pending in the Los Angeles Superior
9 Court, and the complaint herein; and

10 * Armstrong has added herein an improper request
11 for punitive and exemplary damages.³

12 As demonstrated below, for excellent policy reasons, under

13 ² In the cross-complaint in the previous action, Armstrong
14 alleges "Cross-defendant corporations, CSI, CSC, RTC, COST, and ASI
15 act as one organization and are termed hereinafter as the 'ORG.'" [Exhibit 1 to Request for Judicial Notice, ¶ 8.] This language is
16 eliminated from the corresponding paragraph of the cross-complaint
herein, paragraph 6. [Exhibit 2 to Request for Judicial Notice.]

17 ³ Code of Civil Procedure Section 425.14 provides in relevant
18 part that

19 No claim for punitive or exemplary damages against a
20 religious corporation or religious corporation sole shall
21 be included in a complaint or other pleading unless the
22 court enters an order allowing an amended pleading that
23 includes a claim for punitive or exemplary damages to be
24 filed. The court may allow the filing of an amended
pleading claiming punitive or exemplary damages on a
motion by the party seeking the amended pleading and upon
a finding, on the basis of supporting and opposing
affidavits presented, that the plaintiff has established
evidence which substantiates that plaintiff will meet the
clear and convincing standard of proof under Section 3294
of the Civil Code.

25 The Church is a non-profit religious corporation, organized under
26 the laws of the State of California, and considered a charitable,
27 religious organization by the Internal Revenue Service.
28 Accordingly, the Church has moved to strike Armstrong's request for
punitive damages. [See, Memorandum of Points and Authorities in
Support of Church of Scientology International's Motion to Strike
All or Portions of Armstrong's Cross-Complaint, pp. 7 - 8, and
Exhibits B and D thereto.]

1 California law a party is not permitted to simultaneously
2 maintain identical actions in two different forums, again
3 justifying the sustaining of the Church's demurrer. At the very
4 least, litigation of the Second Cross-complaint must be abated
5 until after there is a final determination of Armstrong's claims
6 on the First Cross-complaint.

7 **II. STATEMENT OF FACTS**

8 Defendant Armstrong filed the Second Cross-complaint in this
9 action on November 30, 1993. [Ex. 3 to Request for Judicial
10 Notice.] He filed the First Cross-complaint on October 7, 1992.
11 [Ex. 1 to Request for Judicial Notice.] Both Cross-complaints
12 assert a cause of action for abuse of process. [Ex. 1 to Request
13 for Judicial Notice, Second Cause of Action, ¶¶ 64 - 69; Ex. 3 to
14 Request for Judicial Notice, ¶¶ 57 - 62.]

15 The First Cross-complaint has not been adjudicated, and is
16 still pending in Los Angeles Superior Court. On March 3, 1993,
17 the Church filed a motion for summary adjudication of, inter
18 alia, the cause of action for abuse of process which is
19 duplicated in the Second Cross-complaint [Exs. 4 - 5 to Request
20 for Judicial Notice.] All activity in that action, including
21 adjudication of the Church's pending motion, was stayed by the
22 Los Angeles court on March 23, 1993 [Ex. 6 to Request for
23 Judicial Notice, Minute Order]. The condition delineated by the
24 Court for a lifting of the stay -- a decision by the Court of
25 Appeal concerning Armstrong's appeal of the Court's Order of
26 Preliminary Injunction -- has not yet occurred. Hence the First
27 Cross-complaint, and the dispositive motion concerning it, await
28 determination.

1 A side-by-side comparison of these cross-complaints reveals
2 the Second Cross-complaint to be a slightly word-processed
3 duplicate of the First Cross-complaint. Both documents are
4 rambling diatribes which allege conduct by "the ORG" (First
5 Cross-Complaint) or "Scientology" (Second Cross-complaint). Most
6 of the allegations concern actions which allegedly happened to
7 non-parties, or which supposedly occurred many years ago. The
8 First Cross-complaint contains 72 paragraphs. Sixty of those
9 paragraphs have been duplicated in the Second Cross-complaint,
10 modified only to accuse "Scientology" instead of the "ORG," to
11 add a few phrases of irrelevant hyperbole and to delete
12 references to previously named cross-defendants. [Exs. 1 and 3
13 to Request for Judicial Notice.] The origin of each paragraph in
14 the Second Cross-complaint and in the First Cross-complaint can
15 be easily observed by directly comparing the two documents, with
16 the following correlation. The list shows the identity of
17 paragraphs by listing first, the paragraph in the First Cross-
18 complaint and second, the identical paragraph in the Second
19 Cross-complaint, as: "First Cross-complaint Paragraph Number:
20 Second Cross-complaint Paragraph Number": 1:1; 2:2; 4:3; 6:4;
21 7:5; 8:6; 9:7; 12:8; 13:9; 14:10; 15:11; 16:12; 17:13;
22 18:14;19:15; 20:16; 21:17; 22:18; 23:19; 24:20; 25:21; 26:22;
23 27:23; 28:24; 29:25; 30:26; 31:27; 32:28; 33:29; 34:30; 35:31;
24 36:32; 37:33; 38:34; 39:35; 40:36; 41:37; 42:38; 43:39; 44:40;
25 45:41; 46:42; 47:43; 48:44; 49:45; 50:46; 51:47; 52:48; 53:49;
26 54:50; 55:51; 56:52; 57:53; 58:56; 64:57; 65:58; 66:59; 67:60;
27 68:61; 69:62. [Id.]

28 The only paragraphs which Armstrong did not duplicate from

1 the First Cross-complaint consist of paragraphs identifying
2 additional cross-defendants (e.g., ¶¶ 3, 5, 10, 11), none of whom
3 were ever served, and paragraphs defining claims for declaratory
4 relief and breach of contract (¶¶ 59 - 63, 70 - 72).

5 Armstrong has added two paragraphs to the Second Cross-
6 complaint, paragraphs 54 and 55. They state:

7 54. On July 8, 1993, Scientology filed another
8 lawsuit against ARMSTRONG styled Church of Scientology
9 International v. Armstrong, Los Angeles Superior Court,
10 Case No. BC 084 642 (hereinafter "Armstrong III") in
11 retaliation for ARMSTRONG's continuing to publicly
12 speak out in the news media on the subject of
13 Scientology and its practices and for filing a
14 declaration on behalf of a defendant, Lawrence
15 Wollersheim, whom Scientology had sued.

16 55. On July 23, 1993, Scientology filed the
17 instant lawsuit against ARMSTRONG (hereinafter
18 Armstrong IV"). Said lawsuit is without merit and is
19 yet another part of the on-going Fair Game activity
20 that Scientology has historically directed against
21 ARMSTRONG which uses the legal system as an engine to
22 harass and to attempt to destroy and ruin ARMSTRONG.

23 Exhibit 3 to Request for Judicial Notice.

24 These are the only allegations which are not duplicative of
25 the earlier action. As demonstrated below, they are insufficient
26 to state a new claim for abuse of process, and can never be
27 amended to so state such a claim.

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III. ARGUMENT

A. Demurrer Must Be Sustained Because Armstrong Has Not And Cannot Allege Facts Sufficient To State A Claim For Abuse Of Process

The Second Cross-complaint for Abuse of Process is inadequate because: (1) the alleged pre-November 30, 1993 conduct is precluded by the one-year statute of limitations; and (2) the alleged post-November 30, 1992 conduct is absolutely privileged pursuant to Civil Code Section 47(2).⁴

The Second Cross-complaint was filed on November 30, 1993. As will be discussed, conduct occurring before November 30, 1993 is precluded by the applicable limitations statute. The only conduct alleged by Armstrong which is alleged to have occurred after November 30, 1992, is alleged in paragraphs 54 and 55, quoted verbatim at pages 4-5, supra. These paragraphs allege merely that the Church filed two complaints against Armstrong, one "in retaliation" and the other (this one) "without merit." The complaint does not allege that either of these claims have been terminated in a manner favorable to Armstrong; indeed, this Court may take judicial notice that both are presently pending against Armstrong. [Exs. 6 and 7 to Request for Judicial Notice.]

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⁴ The Church does not, by the making of this demurrer, admit that any of the conduct alleged by Armstrong actually occurred; indeed, the bulk of the pre-November, 1992 acts which Armstrong alleges are demonstrable figments of his fertile imagination. For purposes of demurrer, however, all of the allegations of the Cross-complaint must be assumed to be true. Any factual dispute as to these allegations is irrelevant; even as alleged, they do not state a claim for abuse of process.

1 1. The Conduct Alleged To Have Occurred Before
2 November 30, 1992 Is Precluded by the Statute of
3 Limitations

4 The one-year statute of limitations pursuant to Code of
5 Civil Procedure Section 340 applies to a cause of action for
6 abuse of process. Thornton v. Rhoden (1966) 245 Cal.App.2d 80,
7 95, 53 Cal.Rptr. 706, 717. In Thornton, the plaintiff alleged
8 that defendant had abused process by taking, transcribing and
9 filing a deposition in which the defendant made false and
10 defamatory claims. The deposition was taken and transcribed more
11 than one year before the action for abuse of process was filed,
12 and filed one year exactly before the filing of the abuse of
13 process complaint. The Court of Appeal found that the alleged
14 taking and transcribing of the deposition were beyond the
15 statute, and could not be considered part of the plaintiff's
16 abuse of process claim. Id.⁵

17 Here, alleged conduct which purportedly occurred prior to
18 November 30, 1992 is similarly beyond the statute of limitations,
19 and any abuse of process claim which could possibly attach to
20 those claims (and the Church considers that none could) is time-
21 barred. On the face of the Second Cross-complaint, the conduct
22 alleged in paragraphs 9 through 53 and 56 is alleged to have
23 occurred before November 30, 1991. Accordingly, the conduct
24 alleged in those paragraphs is barred by the statute of
25 limitations.

26 ⁵ The court went on to hold that defendant's actions were
27 privileged, and "even if we disregard the privilege, it is obvious
28 that just taking the ordinary steps in connection with the taking,
 transcribing and filing of the deposition cannot be an abuse of
 process." 53 Cal.Rptr. at 720.

1 2. The Conduct Post-November 30, 1992 Cannot Be the
2 Basis For An Abuse of Process Claim Because It Is
3 Privileged

4 To state a claim for abuse of process, a plaintiff must
5 allege two elements: "first, an ulterior purpose, and second, a
6 wilful act in the use of the process not proper in the regular
7 conduct of the proceeding." Oren Royal Oaks Venture v.
8 Greenberg, Bernhard, Weiss & Karma, Inc. (1986) 42 Cal.3d 1157,
9 1168, 232 Cal.Rptr. 567, 728 P.2d 1202, quoting Templeton Feed &
10 Grain v. Ralston Purina Co. (1968) 69 Cal.2d 461, 466, 72
11 Cal.Rptr. 344, 446 P.2d 152. Here, Armstrong alleges that the
12 "wilful acts in the use of process" are the filing by
13 "Scientology" of a lawsuit on July 8, 1993, and the filing by
14 "Scientology" of the complaint in this case on July 23, 1993.

15 Civil Code Section 47 provides in relevant part that "A
16 privileged publication or broadcast is one made: (b) In
17 any judicial proceeding. . . ." As the California Supreme Court
18 recently re-emphasized,

19 For well over a century, communications with "some
20 relation" to judicial proceedings have been absolutely
21 immune from tort liability by the privilege codified as
22 section 47(b). At least since then-Justice Traynor's
23 opinion in Albertson v. Raboff (1956) 46 Cal.2d 375,
24 295 P.2d 405, California courts have given the
25 privilege an expansive reach. Indeed, as we recently
26 noted, "the only exception to [the] application of
27 section 47(2) [now § 47(b)] to tort suits has been for
28 malicious prosecution actions. [Citations]."

Rubin v. Green (1993) ___ Cal.3d ___, 17 Cal.Rptr.2d 828, 831,

1 quoting Silberg v. Anderson (1990) 50 Cal.3d 205, 216, 266
2 Cal.Rptr. 638, 786 P.2d 365. In Rubin, the court held that even
3 communications and communicative conduct bearing "some relation"
4 to an anticipated lawsuit were privileged. Id. at 832 - 838.

5 Moreover, in Oren Royal Oaks, supra, the California Supreme
6 Court, upholding a long line of appellate court cases, held that
7 the exact conduct alleged by Armstrong -- filing or maintaining a
8 lawsuit -- cannot support a claim for abuse of process, stating:

9 The relevant California authorities establish

10 . . . that while a defendant's act of improperly
11 instituting or maintaining an action may, in an
12 appropriate case, give rise to a cause of action for
13 malicious prosecution, the mere filing or maintaining
14 of a lawsuit -- even for an improper purpose -- is not
15 a proper basis for an abuse of process action. The
16 overwhelming majority of out-of-state precedents have
17 reached the same conclusion.

18 42 Cal.3d at 1169 (citations omitted). The Court went on to
19 explain that it agreed with the underlying rationale for these
20 decisions, which is to afford litigants an appropriate
21 accommodation between the freedom of the individual to seek
22 redress from the courts, and the interest of a potential
23 defendant in being free from inappropriate litigation. The Court
24 noted that the common law tort of malicious prosecution, which
25 provides this accommodation, requires that a plaintiff prove that
26 "the prior action (1) was commenced by or at the direction of the
27 defendant and was pursued to a legal termination in his . . .
28 favor . . . ; (2) was brought without probable cause . . . ; and

1 (3) was initiated with malice. . . ." Id., quoting Bertero v.
2 National General Corp. (1974) 13 Cal.3d 43, 50, 118 Cal.Rptr.
3 184, 529 P.2d 608 [citations omitted].

4 If Armstrong were permitted to allege an abuse of process
5 claim against the Church merely by alleging that the Church had
6 filed a lawsuit for some ulterior purpose, the protections
7 afforded by the requirements of a malicious prosecution claim
8 would be annihilated. In the words of the California Supreme
9 Court,

10 If . . . the filing of an action for an improper
11 'ulterior' purpose were itself sufficient to give rise
12 to an abuse of process action, the 'lack-of-probable-
13 cause' element of the malicious prosecution tort would
14 be completely negated; even if an individual could
15 demonstrate that he had reasonable cause to believe
16 that his initial lawsuit had merit when he filed the
17 action, he would still face potential liability under
18 an abuse of process theory. Because the lack-of-
19 probable-cause requirement in the malicious prosecution
20 tort plays a crucial role in protecting the right to
21 seek judicial relief, we agree with the prior decisions
22 which have concluded that this element may not be
23 circumvented through expansion of the abuse of process
24 tort to encompass the alleged improper filing of a
25 lawsuit.

26 Id. at 1169-1170 (citations omitted, emphasis supplied).

27 Here, the only conduct which Armstrong has alleged in his
28 Second Cross-complaint which is not barred by the statute of

1 limitations is the filing of two lawsuits by the Church.⁶ These
2 allegations, without more, cannot, under Oren Royal Oaks, support
3 a claim for abuse of process. Moreover, because neither of the
4 actions concerning which Armstrong complains have been "pursued
5 to legal termination in [Armstrong's] favor," Armstrong cannot by
6 repleading state a claim for malicious prosecution. Id. Under
7 these circumstances, the Court should sustain the Church's
8 demurrer without leave to amend.

9 **B. Demurrer Must Be Sustained Because There Is Another**
10 **Action Pending Between The Same Parties On The Same**
11 **Cause of Action**

12 Even if the Court determines that Armstrong's Second Cross-
13 complaint could somehow allege a claim for abuse of process,
14 demurrer must still be sustained. Code of Civil Procedure
15 Section 430.10(c) provides, in relevant part, that a cross-
16 defendant may object to a cross-complaint by demurrer when,
17 "[t]here is another action pending between the same parties on
18 the same cause of action." Demurrer is proper in such a case
19 because the first suit affords an ample remedy, rendering the
20 second action unnecessary and vexatious. National Auto. Ins. Co.
21 v. Winter (1943) 58 Cal.App.2d 11, 16, 136 P.2d 22, 25. "It is
22 not the policy of the law to allow a new and different suit
23 between the same parties, concerning the same subject matter,
24 that has already been litigated. Neither will the law allow the
25 parties to trifle with the courts by piecemeal litigation."
26 Wulfjen v. Dolton (1944) 24 Cal.2d 891, 151 P.2d 846, 848,
27 quoting Bingham v. Kearney 136 Cal. 175, 177, 68 P. 597.

28 ⁶ This is also the only conduct alleged which has not already
been alleged by Armstrong in his First Cross-complaint.

1 Accordingly, the law will not permit a cross-defendant to be
2 oppressed by two actions for the same cause of action where the
3 cross-complainant has a complete remedy in one action. Fresno
4 Investment Co. v. Russell (1921) 55 Cal.App. 496, 497, 203 P.
5 815. The second action will be abated by demurrer. Furthermore,
6 where the conditions for an order of abatement exists, such an
7 order issues as a matter of right and not as a matter of
8 discretion. Lawyers Title Ins. Corp. v. Superior Court (1984)
9 151 Cal.App.3d 455, 460, 199 Cal.Rptr. 1, 4.⁷

10 Here, through the addition of two new allegations --
11 amendments which allege only privileged conduct, see Part III A
12 2, supra -- Armstrong seeks to allege a "different" cause of
13 action for abuse of process. These changes do nothing to defeat
14 the Church's demurrer.

15 To prevail on a demurrer pursuant to §430.10(c), the Church
16 must demonstrate that the cause of action for abuse of process
17 alleged in the First Cross-complaint is, for all practical
18 purposes, identical with the cause of action for abuse of process
19 alleged in the Second Cross-complaint. Burnard v. Irigoyen (1943)
20 56 Cal.App.2d 624, 631, 133 P.2d 3, 7. The matters in the prior
21 pending action must be such that a judgment on the merits in the
22 first action would constitute a bar to the second action. Hall v.
23 Susskind (1895) 109 Cal.203, 41 P. 1012, aff'd (1898) 120 Cal.

24
25 ⁷ This is the case because "[u]nder the rule of exclusive
26 concurrent jurisdiction, when two superior courts have concurrent
27 jurisdiction over the subject matter and the parties, the first
28 court to assume jurisdiction has exclusive and continuing
jurisdiction until such time as all necessarily related matters
have been resolved." Lawyers Title Ins. Corp., supra, 151
Cal.App.3d at 460, 199 Cal.Rptr. at 4 (citation omitted).

1 550, 53 P. 46. Moreover, the second claim must involve the same
2 parties that were involved in the first claim. W.R. Grace & Co.
3 v. California Employment Com. (1944) 24 Cal.2d 720, 727, 151 P.2d
4 215, 219. The parties must stand in the same relative positions
5 as plaintiff and defendant in the two actions. Western Pine &
6 Steel Co. v. Tuolumne Gold Dredging Corp. (1944) 63 Cal.App.2d
7 21, 29, 146 P.2d 61, 65. Finally, the moving party must show
8 that there is, in fact, another pending action, which was
9 commenced before the filing of the action in which demurrer is
10 urged. Kirman v. Borzage (1949) 89 Cal.App.2d 898, 903, 202 P.2d
11 303. An action is deemed to be pending from the time of its
12 filing until its final determination on appeal. C.C.P. §1049.

13 Here, Armstrong has not even attempted to allege different
14 facts in support of his abuse of process claim. Virtually every
15 allegation contained in the Second Cross-complaint is a copy of
16 an allegation in the First Cross-complaint, excepting only the
17 two paragraphs alleging privileged conduct and discussed in Part
18 III A, supra. Armstrong's claims of years of "harassment" by the
19 Church, which foolishly paid him large sums of money in
20 settlement of one false claim, are already the subject of
21 litigation in Los Angeles. Armstrong may not re-litigate the
22 same claims here.

23 Similarly, there is an identity of parties between the two
24 actions. Both of the cross-defendants named in the Second Cross-
25 complaint were named as cross-defendants by Armstrong in the
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1 First Cross-complaint.⁸ In the second action, as in the first,
2 only the Church has been served with the Cross-complaint.

3 Moreover, the Church and Armstrong stand in precisely the same
4 position in the Second Cross-complaint as they do in the First.

5 Finally, it is plain from court records which this Court may
6 judicially notice that the First Cross-complaint was commenced
7 before the Second Cross-complaint, and is still pending.

8 Armstrong filed a cross-complaint in the initial action on July
9 22, 1992. [Ex. 8 to Request for Judicial Notice.] On October 7,

10 1992, he filed an amended cross-complaint in that action, the

11 First Cross-complaint, which includes as its second cause of

12 action the claim for abuse of process which Armstrong has

13 replicated herein. [Ex. 1 to Request for Judicial Notice.] On

14 March 3, 1993, the Church filed a motion for summary adjudication
15 of, inter alia, the second cause of action contained in the First

16 Cross-complaint. [Exs. 4 - 5 to Request for Judicial Notice.]

17 On March 23, 1993, the Court in the Los Angeles action ordered a
18 stay of all proceedings therein, pending resolution of an appeal

19 filed by Armstrong to the preliminary injunction obtained by the

20 Church. [Ex. 8 to Request for Judicial Notice.] The appeal of

21 the preliminary injunction has been briefed to the Second

22 District Court of Appeal, but has not yet been set for oral
23

24 ⁸ The fact that Armstrong has named, but not served, other
25 defendants in the first action is irrelevant. The only question to
26 be decided is whether the rights of the parties to the second
27 action will be completely adjudicated by the first. Because here
28 all of the named parties to the second action (Armstrong, the
Church and Mr. Miscavige) are also named parties to the first
action, standing in the same relationship to one another, their
collective rights will be completely determined in the first
action, rendering the second action superfluous.

1 argument. [Ex. 9 to Request for Judicial Notice.] The entire Los
2 Angeles action, including Armstrong's First Cross-complaint, is
3 thus still awaiting determination.

4 With this identity of claims and parties present in a
5 currently pending prior action, this Court must sustain the
6 Church's demurrer pursuant to C.C.P. § 430.10(c).

7 **IV. CONCLUSION**

8 Armstrong's Second Cross-complaint recites stale facts which
9 do not result in a claim for abuse of process. The few
10 allegations which concern matters not barred from consideration
11 by the relevant statute of limitations are barred from
12 consideration by the absolute privilege afforded by Civil Code
13 Section 47(b). Moreover, the Second Cross-complaint is a nearly
14 exact duplicate of an action already pending between these
15 parties in Los Angeles. Armstrong's frivolous reassertion of
16 these claims here wastes the time of both the Court and the
17 Church. The Church's demurrer must be sustained.

18 DATED: January 3, 1994

BOWLES & MOXON

19
20 By:


Laurie J. Bartilson

21
22 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

23 Attorneys for Plaintiff and Cross-
24 Defendant CHURCH OF SCIENTOLOGY
INTERNATIONAL
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 3, 1994, I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS DEMURRER TO GERALD ARMSTRONG'S CROSS-COMPLAINT on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
707 Fawn Drive
San Anselmo, CA 94960

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on January 3, 1994 at Los Angeles, California.

**(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

[]** Such envelopes were hand delivered by
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Executed on _____, at Los Angeles, California.

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correct.

[] (Federal) I declare that I am employed in the
office of a member of the bar of this court at
whose direction the service was made.

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Signature

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